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Wisconsin State Representative
18th Assembly District

Member, Joint Committee on Finance
Chair, Committee on Children and Families

Testimony Before the Assembly Committee on Children and Families September 30, 2009 Assembly Bill 412

I would like to thank Committee members for hearing my testimony today on Assembly Bill 412. I would also like to take this opportunity to thank Representatives Pope-Roberts, Sinicki, and Berceau for cosponsoring this bill.

As we all know, the Milwaukee Journal Sentinel has written an ongoing series of articles about the egregious violations and fraudulent activity committed by certain individuals utilizing the Wisconsin Shares child care subsidy program. Shortly after those stories broke, we, along with many of our colleagues, requested an audit of that program.

Some of the recommendations of the audit were addressed in the state budget and are currently being employed by the Department of Children and Families (DCF) to identify and take action against unscrupulous providers.

This legislation closes one more loophole some unscrupulous providers have used to avoid paying back the ill-gotten gains of the childcare scam they have perpetrated upon Wisconsin taxpayers.

Under current law, if a business incorporates as a limited liability company (LLC) the personal assets of the owner/s are protected should that business dissolve and debts remain.

Assembly Bill 412 will close that loophole for child care providers who receive payments under the Wisconsin Shares Program by holding any officer, director, member, manager or employee of a corporation or limited liability company who holds at least a 20% ownership interest in the company or corporation personally liable for any overpayments made to the childcare center or any penalties imposed by DCF if the business fails and DCF is unable to recoup payment from the business.

DCF has found that in many instances where egregious violations of the Shares program have occurred, the business simply dissolves and the owners open another business under a different name so DCF is unable to recoup any payments from the old business, or withhold any payments from the new business. This provision will close that loophole.

I thank the committee for your time and consideration of this matter. I am happy to answer any questions Committee members may have.

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NEWS FROM BOB JAUCH

WISCONSIN STATE SENATOR

Senator Jauch
Testimony on Assembly Bill 412
Shares Individual Liability
September 30, 2009

Caring for children is one of our most basic responsibilities and supporting early child care services is one of the most essential components of life in our society. Children deserve quality child care services. Working families depend upon it and we must work to ensure that the child care services are accountable and up to the high standards the public expects. It is critical that we enact proper policies and provide adequate resources to protect both the integrity of this program and the taxpayers who fund it.

Fraud and abuse is an affront to the hard working citizens of Wisconsin. The resources expended are intended to support working families in Wisconsin and are not there for the greedy who seek to enrich themselves. The actions recently identified in the Journal Sentinel series are deplorable and require ongoing aggressive efforts to target fraud and abuse to both protect the integrity of our State's child care system as well as protect taxpayers. Fraud and abuse robs the state of valuable resources, but the selfish actions of a few taint a valuable program that is critical to supporting Wisconsin families.

We cannot and do not tolerate fraud and abuse and Wisconsin children and families and taxpayers need to know that the state is working and will continue to work toward a goal of assuming that the tax dollars allocated to support children and families will be spent efficiently and honestly as possible.

In the past 8 months the Legislature, in cooperation with the Governor and Secretary of Children and Family Services, has taken a number of steps to confront the selfish actions of those who steal from our children.

A great deal of progress has been made to eliminate fraud and abuse in the Shares program, especially in providing the Department of Children and Families with the necessary tools. Legislation has been adopted in February and July to provide the resources and policies in place to reduce fraud and overpayments in the system.

- A swipe card system to accurately track attendance and reduce errors in reporting

- A state program integrity unit to track down concerns of fraud and abuse and aggressively recover overpayments.
- Better training of county and tribal agency employees on verification guidelines for Shares participants
- A statewide fraud hotline that allows individuals to report suspected fraud and abuse
- A planned 2010 state takeover of Milwaukee County functions dealing with eligibility and authorizations for Shares, which have been fraught with delays and inaccurate record-keeping
- Several statutory changes that help DCF limit the potential for abuse and more efficiently identify and respond to fraud when it does occur.

In addition to the Legislative changes Secretary Bicha and his staff have worked tirelessly to take steps to identify potential abuse and hold the thieves accountable. Much of their work takes time and isn't revealed as publicly as the recent story of Latasha Jackson. Yet their efforts have produced results.

Over 100 providers have had their licenses revoked since the Department was created. In just the last two weeks, Shares payments have been suspended to 69 providers who are reasonably suspected to be defrauding the system and are being further investigated. In May the Department revoked the license of the Ask Ark of Safety child care center that was stealing approximately $900,000 from Shares funds. Another provider, Peek-A-Boo Child Care had its license revoked and access to Shares funds suspended. Fraudulent child care providers are now on notice. The State and local officials have stepped up efforts to detect fraud and illegal behavior will not be tolerated.

However, we need to do more. Addressing fraud and abuse in the child care system must continue to be a high priority. Today I am sharing my support for a bill I have authored with Representative Grigsby to take another step to hold accountable providers who choose to steal from taxpayers. This bill gives the Department of Children and Families authority to hold accountable for Shares fraud individuals who own a substantial stake in a child care business. Currently if a provider steals money from the state, the only way the state can get that money back is if that provider continues to serve Shares children. Numerous child care businesses have closed their doors after their theft became known by the Department and the public and have escaped responsibility for the money they fraudulently took. Because DCF's goal is to not allow these fraudulent providers to continue to serve Shares children, the current system runs counter-intuitive to this goal.

Clearly the Department's current level of authority to recoup overpayments and fraud is unacceptable. This legislation provides them another tool they need to restore the public's faith in the Shares program.

I have pledged to continue to work with DCF and Representative Grigsby to continue implementing these changes and looking at all other possible solutions. In addition to this legislation, Representative Grigsby and I have begun circulating a bill that will create a better mechanism to ensure that child care providers, employees and those living at day care residences with criminal backgrounds do not endanger children in child care settings. Both committees will conduct public hearings on this bill next week and my committee will vote on the legislation so that it can be presented to the Senate for consideration in October. We must act quickly for the safety of our most precious assets: our children.

Although we have made progress on this critical issue for families, we must not avert our attention from the tasks still before us. I ask that you support this effort to hold individual perpetrators of fraud liable for their actions and join me in supporting all further efforts to bring integrity back to the Shares program.

Jim Doyle
Governor

Reggie Bicha
Secretary

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September 30, 2009

TO: Assembly Committee on Children and Families and Workforce Development

FROM: Henry Wilde
Deputy Secretary, Department of Children and Families

RE: Wisconsin Shares

I want to start by thanking Senator Jauch and Representative Grigsby for proposing this important legislation and the committee for having me. I would like to start by stating clearly that as an official at the Department of Children and Families, a Wisconsin taxpayer, and an advocate for low income children and families, I am disgusted and outraged by the behavior of so called child care providers who have stolen from the Wisconsin Shares program. I have worked for the Department for 14 months, but I spent six years founding and running high quality child care centers in other states – so I am particularly aggrieved that the individuals who have manipulated the Shares program have cast a cloud over all of Wisconsin's high quality providers. Before I speak to this legislation specifically, I would like to take this opportunity to lay out in greater detail the problems related to provider fraud that during our fourteen months, we have been working to address.

When the program legislation and rules were written in the late 1990s, criminal webs of child care providers were not imagined or anticipated. Let me give five examples:

1) From the creation of the Shares program in 1996 until the budget passed in June, a provider could collect Shares payments for only serving the children of their own employees. For instance, a person could find 10 income eligible parents of young children, open a child care business, enlist those 10 people as "employees," and then receive Shares payments. What occurred instead, in such instances, was that no child care was provided. "Employees" were paid what amounted to a fee. The children brought in Shares revenue. And the so called "provider" who organized the scam took a cut off the top for every child. Today, this law has now been changed to limit the percentage of children in care than can be children of employees. Last week, the Department of Children and Families sent 49 letters to providers notifying them that in 6 weeks, payments would cease for children of employees at their facilities.

2) From the creation of the Shares program until the budget passed in June, a child care provider who stole from the program and sensed that the scheme might unravel could go out of business and burn their records – thereby eliminating the trail – and there were no

laws that made this behavior illegal. Today, the requirement that providers maintain Shares records for three years, whether they are in business or not, is now in statute.

3) Until the budget passed in June, when licensors undertook the multiple step process of revoking licenses, providers could appeal that action, and according to rules that govern Hearings and Appeals, those providers were entitled to continue receiving Shares payments during the appeal. This could mean hundreds of thousands of dollars in payments to a provider that the Department had already revoked. Today, with the budget's new statutory language, the Department has the ability to suspend payments immediately.

4) Until the legislature authorized the creation of an automated attendance or swipe card system, there was no foreseeable manner (aside from 24 hour surveillance) for the Department to independently verify the actual attendance of children in Shares program. Right now, providers retroactively give notice to the state as to how many hours a child attended during a given week without specifying which hours. With the implementation of an automated system next year, our child care licensors will be able to identify real time whether the children being paid for are or are not in attendance.

5) Finally, as was described in the LAB audit, until Act 2 passed in 2009, there was 1.0 state FTE allocated to conduct program integrity for the nearly $400 million Wisconsin Shares program. The creation of the Fraud Detection and Prevention Unit increased the state staffing available to fight fraud in this program by 500%. The original statutory expectations were very clearly that this program was to be operated by counties. The Department has experienced that in Milwaukee County, this operational arrangement has not been successful, which leads to my description of the second major problem related to provider fraud in the Shares program.

Corruption in the Wisconsin Shares program is so heavily concentrated in Milwaukee County that failed efforts in fraud prevention, detection, and collection in this county plague the entire program.

As many of you know, the Department is assuming responsibility for child care program integrity efforts in Milwaukee County, in tandem with the takeover of Milwaukee County income maintenance functions, on January 1st, 2010. You are already aware that roughly 58% of Shares expenditures, or around $200 million per year, are spent in Milwaukee County. You are probably not aware, however, the degree to which anomalously highly paid providers are disproportionately concentrated in Milwaukee County. I would like to lay out this issue clearly with data.

Let me start by sharing the operational model of a typical child care provider. Providers are licensed to serve a certain number of slots. For simplicity's sake, imagine a provider which can serve a maximum of 8 children at any time. Several children that the provider serves only come three days per week and pay a lower rate. Others only come in the morning or afternoon and also pay a lower rate. The child care provider is pleased if they can find a Monday-Wednesday-

Friday child who can be paired with a Tuesday-Thursday child or an AM child with a PM child, in which case multiple children technically share the same slot.

To give a few contextual data points, in 2004, a national for-profit firm, which operates in Wisconsin, owned approximately 165,000 licensed child care slots nationally and earned nearly one billion dollars in revenue (or $6,000 per licensed slot). I recently met with the state's Early Learning Coalition, a collection of leading providers, and there was general consensus that $10-$11K per licensed slot per year was a common, though ambitious, revenue goal, given the operational realities of the child care industry – and that serving up to 2 children per licensed slot was also an ambitious, though unlikely goal.

It is notable, then, to compare this data to Shares payments to providers. DCF has created a series of quantitative red flag reports that identify child care providers about whom we have strong suspicion of fraud based on usage and reimbursement patterns. Let me share two specific measures: Annualized Shares revenue per slot per child and number of Shares children served per slot.

Using a recent two month period, we found that 264 child care providers in Wisconsin were receiving more than $11,000 annualized per licensed slot in Shares funding. (This calculation conservatively assumes zero private pay children.) Of those 264 providers, 263 are in Milwaukee County. We found that 87 providers were receiving more than $15,000 per licensed slot. All 87 of those providers are in Milwaukee County.

We have also quantified the number of children being served per licensed slot by provider. In the state of Wisconsin, there are 93 providers that claimed to be serving an average of greater than 2.5 Wisconsin Shares children per slot. 90 of those providers are in Milwaukee County. Of those 93, 36 providers claimed to be serving greater than an average of 3 Wisconsin Shares children per slot. All 36 were in Milwaukee County. For anyone who has run a successful child care center, these numbers are breathtaking and if not operationally impossible, deeply unlikely. Given such data, we believe that provider fraud is significantly concentrated in Milwaukee County.

The logical question is what we are doing with this data, and the answer is that we are pursuing these leads with every available staff resource we have. We have hired two former police officers to join our Fraud Unit, and they start this month. We have hired a private investigation firm to assist us in Milwaukee County investigations. We have assigned an attorney to represent us in the dozens of fair hearings that will likely result from our work. We have collected attendance records from more than 75 providers, which we are currently analyzing for overpayments. We have suspended payments to 69 providers, which, based on August payments, were collectively receiving more than $15 million per year in payments. The Department of Children and Families will not stop until we have rooted provider fraud out of this program.

Right now, as we pursue investigations of the providers I described, however, the Milwaukee County Child Care Program Integrity Unit is only staffed at a fraction of capacity. The Milwaukee County audit of the Shares program states that "Milwaukee County District

Attorney's Office has inadequate resources to investigate and pursue prosecution of potential fraud cases identified by the Program Integrity Unit." At the same time, for the past five years, the Milwaukee County Human Services Department has consistently underspent its contract to administer the program – by $872,000 in 2008 – funding that could have been used to pursue fraud investigations. I want to be clear that I am not making a statement about the work of the current employees in the unit, as they have worked closely and collaboratively with our Department. But there is only so much that those few people can do, and the challenge we face in Milwaukee County is formidable.

Even when the Department finds fraud, the connection between what payments we believe to be fraudulent, what we can prove, what actions law enforcement takes, and ultimately what we can reclaim, must be strengthened:

As the Shares program stands today, there are three ways we can prove overpayments to providers. First, we can compare paper attendance records to submissions for Shares reimbursements and find discrepancies. This is a difficult and time consuming process. As was pointed out in Milwaukee County's audit of the Shares program, Milwaukee County's Program Integrity staff spends 68% of their time reviewing attendance records. It is notable that if a criminal enterprise is thorough in its creation of fake records, this method alone can be fruitless. Second, we can place surveillance on a center, monitor the children entering and exiting, and later compare the actual attendance to the number of hours claimed. Milwaukee County and the Milwaukee Police Department have utilized this practice effectively in select instances, but it requires significant resources from the state, the county, or local law enforcement. Third, we can conduct investigations which include interviews with parents who are complicit in the scheme. Again, this is labor intensive, and requires significant resources. As I mentioned earlier, we are in the process of allocating our available resources, including the state's Fraud investigation unit and a private investigation firm, to conduct surveillance and thorough investigations.

Unfortunately, even when we are able to use one of these methods to establish overpayments, without crimes being charged or convictions achieved, which has rarely happened historically, the state has limited ability to reclaim those overpayments. Right now, the only manner in which the state can effectively collect from an incorporated provider is to deduct funds from future payments. In other words, if we find fraud and revoke that provider's license, we could only collect from them were we to leave them in business to receive more Shares payments! That is why this legislation is so crucial.

This bill will allow the Department of Children and Families to drastically improve collections from child care providers who owe the Wisconsin Shares program when they go out of business – akin to the way we collect from individual participants who defraud the system. Pursuit and collection of child care recipient fraud – as opposed to provider fraud – is less labor intensive, and we are already able to utilize multiple collection methods simultaneously including state tax offset, wage levy, and property liens to collect these debts. This legislation will allow the utilization of these same collection methods for incorporated providers.

I would like to thank Representative Grigsby and Senator Jauch for their continued work on this important issue. I would also like to thank the bi-partisan group of cosponsors of this legislation.

Again, I would urge the Committee to ask questions of subsequent witnesses to confirm the analysis that I have shared here today -- and I am happy to meet with you subsequent to this hearing to further discuss the Department's work on this important issue.

Testimony on Assembly Bill 412

Chairperson Grigsby and members of the Assembly Committee on Children and Families– I would like to thank you for the opportunity to provide written testimony today in support of Assembly Bill 412. My name is Ruth Schmidt and I am writing on behalf of Wisconsin Early Childhood Association. As a professional association promoting excellence in early childhood programs, we are as appalled as many are by the recent reports of fraud within the Wisconsin Shares child care subsidy programs. We are also keenly aware that these reports do NOT tell the complete story of child care in Wisconsin. We know that fraud is costing the state millions of taxpayer dollars, but we also know that 95% of child care subsidies are going to providers who are following the rules. Every day thousands of honest child care providers bring their best selves to the service of children and families, approaching their work with dedication to the well-being of others, a commitment of service to their communities, and a love for young children.

The unfortunate truth is that the kind of fraud being uncovered undermines the good work of these early childhood professionals. In a time when we are trying to redefine the world view of our work from that of babysitter to one of early childhood educator, this is a sad truth. Because the field is characterized by low wages and inadequate benefits, a provider's integrity and self-respect becomes an important commodity to hold on to. So we take a stand against fraud where it is intentional, and we support a bill that expands personal liability for such fraudulent behavior for the following three reasons:

First, it is our hope that this bill will inspire all child care programs to improve their business practices in a way that ensures that there are checks and balances within accounting systems so no one person can commit fraud, recklessly endangering a program that children and families count on while jeopardizing the jobs of others.

Secondly, given the underfunded nature of child care in general and the immense demands on the Wisconsin Shares program due to the current economic crisis, we want every single public dollar to be invested wisely. WECA awaits the day when there is enough money to guarantee that all children have access to high quality early childhood programs, especially those from low income families who have the most to gain in terms of future success and school readiness. Money saved on curbing fraud must support quality improvements- including implementing a quality rating and improvement system that offers incentives to high-quality providers and resources to those who wish to improve.

Finally, we know that the Department of Children and Families has put in place- and will continue to put in place- mechanisms to identify fraud earlier and prevent it whenever possible. Developing the Program Integrity Unit and the Child Care Anti-Fraud Task Force are two major steps in this direction and ones that we firmly stand behind.

WECA urges the Committee on Children and Families in the Assembly to support passage of Assembly Bill 412.

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